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## VEHICLE ACCIDENT ALLEGEDLY IN ROUTE TO A WORK SITE AFTER HOURS OF DRINKING AND PARTYING AT A STRIP CLUB WAS NOT COMPENSABLE

This death benefits claim arises out of a motor vehicle accident that occurred in the early morning hours of January 17, 2022, resulting in the death of Jonnie Keith Cope. Mr. Cope had a minor child, and the child's mother filed suit for benefits on behalf of the child. Mr. Cope, along with three other men, were working at a jobsite in Roby, TX.

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On January 16, 2022, the four men finished work around 6:00 pm and met for dinner at a local restaurant around 7:00 pm. At dinner, the men ate, consumed alcohol, and watched football until approximately 10:00 pm. Following dinner, they traveled together to a gentlemen's club in Lubbock, TX where they remained until about 2:00 am. At that time, they attempted to drive back to Snyder, TX, allegedly to take one of the men to a work site, when the driver fell asleep and lost control of the vehicle. Mr. Cope was pronounced dead at the scene. On the employer's summary judgment, the compensation judge found that the men were NOT on a mission that furthered the interests of the employer, and thus the trip fell outside the course and scope of their employment. All claims were dismissed, which was affirmed by the court of appeal. *Reed OBO Cope v. Black Star Energy Services, LLC*, 2023-148 (La. App. 3 Cir. 11/22/23).

## Attorney Spotlight



### Vivian Guarisco

Vivian was born and raised in Baton Rouge. She attended Louisiana State University, receiving a B.S. in Accounting. After completing her undergraduate degree, Vivian received her Juris Doctor and Graduate Degree in Comparative Law from Louisiana State University Paul M. Hebert Law Center in 2016, graduating summa cum laude.

Before joining Taylor, Wellons, Politz & Duhe, Vivian served as a Judicial Law Clerk to the Honorable Judge Jason Verdigets of the 23rd Judicial District Court. After clerking, Vivian joined a small plaintiff's firm focusing on workers' compensation and personal injury before joining TWPD, giving her a complete perspective of the cases she handles. Since joining the firm, Vivian has continued her practice with a focus on workers' compensation.



## **COURT HOLDS THAT “MANUAL LABOR” EXCEPTION APPLIES TO INDEPENDENT CONTRACTOR CLAIMANT**

Claimant cleaned commercial office spaces for a living. She sought benefits after being injured in a vehicle accident that occurred while she was driving between two locations that she was assigned to clean. The claim was denied on grounds that Claimant was not an “employee” and because she was not in the course and scope of employment when driving. Claimant sued, and the defendant filed a motion for summary judgment asserting that Claimant could not meet her burden of proving she was an employee or on course and scope. The compensation judge granted summary judgment in favor of the employer finding that claimant was an independent contractor and had not shown that the manual labor exception applies. The court did not address the course and scope issue. On appeal, the Fifth Circuit agreed with the judge that claimant was an independent contractor but disagreed that the independent contractor “manual labor” exception did not apply. Based on Claimant’s deposition testimony, the appeal court held that the physical aspect of her work predominated over the mental aspect, thus satisfying the manual labor exception. The case was remanded to the compensation court to determine the issue of course and scope. *Rosales v. American Liberty Insurance Co.*, 23-49 (La. App. 5 Cir. 10/31/23).

# **PARKING LOT VEHICLE ACCIDENT AFTER WORK HOURS WAS DEEMED WITHIN COURSE AND SCOPE**

A teacher's aide was involved in a motor vehicle accident with a school bus while leaving the school's premises. The issue before the court of appeal was whether her claim was restricted to workers' compensation or whether she could pursue a tort action. The teacher's aide argued that her accident did not arise out of the course and scope of her employment, because her job duties had ended and she was on her way home when the accident occurred. The Third Circuit disagreed, finding that even though the teacher's aide was not performing any specific job duties, a parking lot qualified as the "employer's premises" for the purpose of finding coverage in workers' compensation. *Jones v. Rogers*, 2023-125 (La. App. 3 Cir. 11/15/23).

# **HOMEOWNER WAS NOT RESPONSIBLE FOR COMP BENEFITS**

Claimant filed suit for benefits after falling off of a roof while installing Christmas lights at a private residence. The issue was whether the homeowner could take advantage of the statutory exemption from workers' compensation coverage for all labor, work, or services performed by an employee of a private residential householder on the private residential premises, when earnings were less than \$1,000. The court held that workers' compensation coverage did not apply, because Claimant was working for an exempt private householder, and the work was not a part of the householder's trade, business, or occupation. *Hamilton v. House of Blessing Church, Inc.*, 2022-727 (La. App. 3 Cir. 10/18/23).



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